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CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

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March 3, 2009

Mr. Lowell Finley
Deputy Secretary of State
Voting Systems Technology and Policy
Office of the Secretary of State
1500 11th Street, 6th Floor
Sacramento, CA 95814

Dear Mr. Finley:

Attached please find comments and suggested changes to the Proposed Recount Regulations suggested by the California Association of Clerks and Election Officials (CACEO).

On January 23, the CACEO Board of Directors met by conference call to discuss the proposed recount regulations that were released in CCROV #08331 on December 30, 2008. It was duly noted that CACEO President Rebecca Martinez had requested input when the Regulations were in draft form in August, 2008. Unfortunately, many counties were unable to participate at that time, due to the impending Presidential General Election.

It was concluded that additional feedback was vital and that the impacts of the Regulations would vary significantly by voting system. As a result of the meeting, CACEO President Martinez appointed a special committee to review the Proposed Recount Regulations by voting system. Each committee chairperson was directed to contact counties specific to their voting system, to gather and solicit input. Chairpersons submitted proposed changes and comments, which were then compiled into the attached report.

While the concerns specific to each voting system are listed on the attached report, I believe it is important to focus on the recurring theme throughout, that is, these regulations overstep the nature and purpose of a recount, and instead blur the line between recount and an election contest. There are four distinct processes to ensure the accuracy of the vote count and election outcome under California law. Each serves a separate and distinct purpose, should remain separate from the other.

The first process is the Official Canvass of the Vote, a mandated audit process wherein the elections official compares and reconciles the numbers of ballots cast with the numbers of voters either at the polls or requesting vote by mail ballots. Included as part of the Official Canvass, is the statutory process referred to as the

"1% Manual Tally." This process came about when jurisdictions converted from hand counted paper ballots to automated vote count systems, to verify that the equipment is recording votes as it is designed to do. It is somewhat of a misnomer in that more than 1% of the votes are tallied, as the statute was amended to require that, in addition to 1% of the precincts, and the corresponding vote by mail ballots, it is also required to tally at least one precinct for every contest not covered in the original 1% of the precincts. This tally process differs from a recount in that the precincts are chosen at random and voter intent is noted but the count is not altered.

Recount is the avenue available to ensure that votes have been counted according to voter intent. This is the appropriate avenue when one suspects that the vote count does not accurately reflect the intent of the voters, and is most frequently requested in the case of close outcomes. While a machine recount is allowable, it is rarely requested. A recount is generally accomplished by a hand count of the votes with an eye towards voter intent. In the case of a hand recount, the equipment used to cast or tally the votes, video surveillance, etc. have no relevancy to this procedure. The items listed are appropriate to an election contest; wherein it can be determined if there were other factors that could have affected the election outcome.

An Election Contest, a judicial proceeding, is the final venue for determining the outcome of an election. There are specific grounds for contesting elections, including an error in the vote-counting programs or summation of ballot counts. In an election contest the equipment used to cast or tally the votes, video surveillance, audit logs, etc. can be germane to the outcome of the election.

There was significant concern noted that the Proposed Recount Regulations blurred the distinction between a recount and an election contest. Most pointedly were those materials identified as relevant materials in Section 20813. Comments from county representatives of each voting system, including Los Angeles County asked that the definition of "relevant materials" be clarified, and restricted to those materials directly related to a recount of votes cast, not including materials appropriate to an election contest.

There was also considerable discussion regarding the cost of a recount conducted under the Proposed Regulations. There are concerns that the Proposed Regulations could drive the cost of a recount to a prohibitive level for candidates and campaigns. Because the requestor has to pay an estimated daily deposit to cover the cost of the recount, and does not receive a refund unless the outcome of the election changes, the cost is of great importance. If only well-funded campaigns are afforded the opportunity for a recount, an injustice has been done.

Finally, it is imperative that the Regulations be inclusive of all voting systems certified for use in California. The practical and logistical limitations of each voting system must be recognized, and the regulations should not place counties in the position of non-compliance due to limitations of the voting system utilized.

I appreciate the opportunity to address these issues on behalf of the California Association of Clerks and Election Officials.

Very truly yours,



Gail Pellerin, Vice-President
California Association of Clerks
and Election Officials

TEXT OF PROPOSED REGULATIONS

Add Sections 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20840, 20841, and 20842, of Chapter 8 to Division 7 of Title 2 of the California Code of Regulations.

Chapter 8. Recounts

Article 1. General Provisions.

§ 20810. Purpose.

- (a) The purpose of this chapter is to establish standards and procedures for conducting recounts of votes cast for all elections in the State of California requested pursuant to Chapter 9 of Division 15 of the California Elections Code.
- (b) This chapter applies to the Secretary of State and all elections officials within the State of California in conducting recounts of votes cast for all elections in this state.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15600 and 15601, Elections Code.

20811. Definitions.

- (a) "Election data media device" means a card, cartridge, USB flash memory stick or other digital storage device that stores ballot information and/or voting results information in a non-volatile form.
- (b) "Governing body" includes, but is not limited to, a city council or a county board of supervisors.
- (c) "Interested party" includes, but is not limited to, the requestor and those persons identified in Elections Code section 15628.
- (d) "Observer" means any representative of a qualified political party, representative of a bona fide association of citizens, or other person who wishes to observe the recount proceedings subject to space limitations.
- (e) "Qualified political party" means only a political party qualified to participate in the last primary election.
- (f) "Requestor" means a voter who requests a recount or any other voter who, during the conduct of a recount and for 24 hours thereafter, requests the recount of additional precincts not recounted as a result of the original request.
- (g) "System redundant vote data" means each and every electronic record of election results for ballots cast in an election on one or more voting system units that is stored in any part of the voting system other than the jurisdiction's central electronic repository of results for that election. Some voting systems do not have redundant vote data on all tabulation devices.

Comment [MSOffice1]: Premier Voting System Counties: In general we agree that standards and procedures for conducting recounts of votes cast for all elections in the State of California is a worthy objective. However, this document goes beyond a recount of votes cast and blurs the distinction between a recount of votes and a challenge to the conduct of an election which is the subject of Division 16 of the California Elections Code, beginning at section 16000.

Comment [MSOffice2]: Sequoia Voting System Counties: Agree with Premier.

Comment [MSOffice3]: ES&S Voting System Counties: Agree with Premier

Comment [JA4]: Sequoia Voting System Counties: This should be a recount of ballots, not Election data media devices...

Comment [MSOffice5]: LA County: Need clarification of reference to "voting results information in a non-volatile form." LA's understanding is that this is a permanent form of secure/not changeable storage and therefore not susceptible to tampering.

Comment [MSOffice6]: Premier Voting System Counties: The definition of "System redundant vote data" under (g) is superfluous to a recount of votes cast, as noted in our comments under section 20813. It should also be noted that some vote tabulating equipment does not contain redundant vote storage on the device.

Comment [JA7]: Hart Voting System Counties: "System redundant vote data" definition is also a problem for some counties. Does this have anything to do with the multiple places vote data is stored? 5 places: JBC, eSlate, tally, VBO, MBB, servo. Hart may be able to access tally, but the counties themselves cannot.

(h) For purposes of these regulations, "vote tabulating or recording device" means any piece of equipment, other than a voting machine operated by levers or other mechanical means, that is is certified for use to compiles a total of votes cast by means of ballot card sorting, ballot card scanning, paper ballot scanning, electronic data processing or a combination of that type of equipment

Comment [JA8]: Hart Voting System Counties: The definition of "vote tabulating device" does not include BallotNow, which is a "vote recording device." This will need to be clarified. Would like to add "recording" to the definition to cover the entire Hart system.

(i) "Voter" means any elector who is registered under the Elections Code.

(j) "Vote for One" means an election for an office in which the voter may select only one candidate.

Comment [MSOffice9]: LA County: Revise definition of "vote tabulating device," insert exclusionary clause for devices, e.g. PBR equipment not used for tallying official vote results.

(k) "Vote for Multiple" means an election for an office in which the voter may select two or more candidates.

(l) "Voter verified paper audit trail record" is defined as those voter verified paper audit trail rolls showing votes cast for the contest being recounted.

Comment [JA10]: Hart Voting System Counties: Need clarification that the only VVPAT rolls are those showing votes cast for the recount contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 358, 359, 361, 15620, 15621, 15623, and 15625, Elections Code.

§ 20812. Who May Request Recount.

(a) Any voter may, pursuant to Elections Code sections 15620, 15621 or 15623, request a recount.

(b) Upon receipt of a request for recount, the elections official shall verify that the person requesting the recount is registered to vote in ~~this state~~ the jurisdiction for which the recount is requested.

Comment [MSOffice11]: ES&S Voting System Counties: Agree with Premier comment (below)

Comment [MSOffice12]: Premier Voting System Counties: Subparagraph (b) simply requires the election official to verify that the person requesting the recount is "...registered to vote in this state." It is our reading of Elections Code section 15620, that the person requesting the recount must be a voter in the jurisdiction in which the recount is requested. Under the proposed regulation, a voter in Yuba County could request a recount in Alameda County.

(c) Any time during the conduct of a recount and for 24 hours thereafter, any voter other than the original requestor may, pursuant to Elections Code sections 15620, 15621 or 15623, request the recount of any precincts not recounted as a result of the original recount request.

Comment [JA13]: Sequoia Voting System Counties: Do not agree with this change. Current statute only requires the voter to be registered in the state. Need to seek legislative change.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15620, 15621 and 15623, Elections Code.

§ 20813. Material To Be Examined; Relevant Material.

(a) Requests to examine relevant material shall be made by the requestor in writing and shall be received by the elections official before the recounting of ballots ~~is~~ ~~complete~~commences.

Comment [MSOffice14]: Premier Voting System Counties: The introduction of this section is a key reason Premier counties take issue with these proposed regulations. Instead of identifying "relevant materials" to include items necessary for the recount of votes (namely, voted ballots, rejected absentee and provisional ballots, and VVPAT images), this section introduces items that have no relevance to the counting of votes. For example, system redundant vote data, audit logs, system logs, logic and accuracy test plans, surveillance video recordings, and chain of custody logs, among other items mentioned, are for diagnostic purposes that would be relevant to an election contest. Including these items will not only blur the distinction between a recount and an election contest, but it will also render the recount process cost-prohibitive for all but the most well-financed voters and campaigns.

Comment [MSOffice15]: ES&S Voting System Counties: Agree with Premier - need to maintain difference between recount and an election contest, which challenges the conduct of an election. Also need to include a timeframe for a request for this relevant material or the recount could continue without end.

Comment [MSOffice16]: LA County: Agree with Premier. The materials listed as relevant are not relevant to the recount itself, but rather involve contesting the conduct of the election. Requirement to provide this material would slow down the recount process and significantly raise the cost of recounts. Recounts are not the venue for challenging system security and integrity aspects of conducting an election, and there are already existing regulation in place that allow interested parties to monitor and audit system security and integrity through the political observer process.

Comment [MSOffice17]: LA County: Need to receive request prior to beginning the recount.

(b) For purposes of this section these regulations, "relevant material" includes but is not limited to vote by mail and provisional ballot envelopes, voting system redundant vote data, election data media devices, audit logs, system logs, pre and post election logic and accuracy testing plans and results, polling place event logs, precinct tally results, central count tally results, consolidated results, surveillance video recordings and chain of custody logs, including logs of security seals and access to election-related storage areas, voted ballots, rejected vote-by-mail and provisional ballot envelopes, and voter verified paper audit tapes produced by DRE equipment that was used for the contest to be recounted. All relevant material shall be requested at one time. The elections official shall produce any relevant material requested.

(c) The elections official may establish reasonable guidelines for the production and examination of relevant material.

(d) The elections official shall communicate any request to examine ballots or other relevant material to each interested party or to his or her representative. The interested parties and their representatives appointed pursuant to section 20816 (a)(1) may be present during the examination of ballots or other relevant material.

(e) The elections official, or his or her designee, shall be present during the examination of ballots or relevant material.

(f) The right to examine relevant materials does not override exclusions to the public records act. Further, to protect voters from the potential of identity theft, no materials containing voters' signatures shall be photocopied.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15629 and 15630, Elections Code.

Comment [MSOffice18]: LA County: Need clarification as to the relevancy of some materials listed. E.g. surveillance video recordings, chain of custody logs, logs of security seals, etc.

Comment [JA19]: Sequoia Voting System Counties: Needs to be limited to the contest subject to recount.

Comment [JA20]: Hart Voting System Counties: Any relevant material needs to be better defined.

Comment [JA21]: Sequoia Voting System Counties: Agree that "relevant material" must be better defined. Blurs the lines between recount and election contest. If the proposed changes are not accepted there is the potential that the equipment may be needed for the next election.

Comment [JA22]: Hart Voting System Counties: Election official should be present during the examination of materials to ensure that materials are not altered or removed.

Comment [JA23]: Hart Voting System Counties: Need to add limitations on viewing confidential data or copying materials like vote by mail ballots and voter registration forms containing voters' signatures.

§ 20814. Order of Recount.

- (a) If no order in which precincts are to be counted is specified in the request for recount, the elections official shall determine the counting order of precincts.
- (b) The requestor may request, in writing, a change to the order of precinct counting determined by the elections official or specified in the requestor's initial request for a recount. Any change in the counting order of precincts is subject to the approval of the elections official.
- (c) Any additional costs associated with requests to change the order of precincts shall be added to the estimate and the requestor shall pay for such costs prior to the rearrangement of the precincts.

Note: Authority cited: Section 12172.5, Government Code; Section 10 and 15601, Elections Code.

Reference: Section 15622, Elections Code.

§ 20815. Cost of Recount.

- (a) The elections official shall estimate the costs necessary to produce relevant material and the requestor shall pay an advance deposit of the estimated amount at least one day prior to the materials being produced. The election official may include the cost of the time necessary to compile the estimate in the estimated cost.
- (b) The requestor shall pay the advance deposit using cash, cashier's check or money order. At the election official's discretion, electronic payment by credit or debit card may be accepted. No personal checks will be accepted.
- (c) At least one day prior to the commencement of the recount, the elections official shall determine the estimated cost for the first day of the recount and shall advise the requestor in writing of the advance deposit required. The requestor shall, before the recount is commenced, deposit this amount with the elections official. The same procedure shall be followed for each subsequent day of the recount. Daily estimates may vary based upon changes in requests made during the course of the recount. Additional fees based upon such requests shall be estimated and paid prior to the implementation of the requested change.
- (d) The requestor shall pay the advance deposit using cash, cashier's check or money order. At the election official's discretion, electronic payment by credit or debit card may be accepted. No personal checks will be accepted.
- (e) All actual costs of the recount resulting from the requestor's particular recount request shall be directly recoverable from the requestor and may include, but are not limited to, space rental, ballot/supply transportation, supervision, security guards, members of the elections official's staff and administrative costs.
- (f) The elections official shall issue a receipt for payment of the deposits and shall maintain a daily log of estimated costs, deposits, actual expenses and amount of refund due, if any.
- (g) If the advance deposit is not paid by a particular requestor, the elections official will terminate the recount of precincts specified by that requestor.

Comment [JA24]: Sequoia Voting System Counties: Mid-recount requests must be included in the costs charged to the requestor.

Comment [MSOffice25]: Premier Voting System Counties: Under (a), the elections official is required to estimate the costs necessary to produce relevant material. Because definition of relevant material is so overly broad as to include items more appropriate to an election contest, the time and labor cost to prepare this estimate and to calculate actual costs and refunds or amounts owed will double, triple, or even quadruple. This can be mitigated by accepting the recommended amendment to section 20813; however if this recommendation is not accepted, add the proposed amendment allowing election officials to charge for the cost or preparing the estimate as well the cost to produce the materials. Under (c), the requestor must pay an advance deposit at least one day prior to the commencement of the recount. The requestor must also pay for the cost of producing the relevant material under (a); however, there is no stated time.

Comment [MSOffice26]: ES&S Voting System Counties: Agree with both Premier recommendations.

Comment [MSOffice27]: Hart Voting System Counties: Is a business check or a campaign account check considered a personal check? Should the word "personal" be deleted and section amended to read "No checks, other than cashier's checks, will be accepted."

Comment [JA28]: Sequoia Voting System Counties: Need clarification that estimates may vary, and recount will not proceed until payment is received.

Comment [MSOffice29]: Hart Voting System Counties: Is a business check or a campaign account check considered a personal check? Should the word "personal" be deleted and section amended to read "No checks, other than cashier's checks, will be accepted."

Comment [JA30]: Sequoia Voting System Counties: Agree with this addition.

Comment [JA31]: ES&S Voting System Counties: Need to be able to recoup the cost of additional space rental if necessary.

- (h) When the recount is completed or discontinued, any amount collected from a voter requesting the recount which exceeds the actual costs shall be refunded to that requestor.
- (i) In the event the actual costs exceed the prepaid estimated costs, the requestor shall be charged for and pay the additional amount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15624 and 15625, Elections Code.

Comment [JA32]: DFM Voting System Counties: There is precedent for this in E.C. 13307(c) pertaining to candidates' statements of qualifications.

§ 20816. Location of Recount.

(a) The recount shall take place in a location to be determined by the elections official. The elections official shall may use their existing facilities, or in the event the elections official's facilities are not deemed large enough, at the option of, and payment by the requestor, the elections official may designate -choose- a location that is large enough to accommodate the presence of the following:

(1) Not more than two representatives of each interested party, and in the case of a recount of a partisan office, not more than two representatives of each qualified political party to check and review the preparation, testing and operation of the tabulating devices and to attend any or all phases of the recount; and

(2) Not more than two representatives of any bona fide association of citizens or a media organization to check and review the preparation, testing and operation of the tabulating devices, and have the representative in attendance at any or all phases of the recount.

(3) In the event the elections official determines that more than two recount boards are necessary, each interested party may designate one additional representative for every additional recount board appointed, solely for the purpose of viewing the recount of ballots and challenging ballots.

(b) The elections official may limit the total number of representatives employed pursuant to subdivision (a)(2) in attendance to no more than 10 by a manner in which each interested bona fide association of citizens or media organization has an equal opportunity to participate. Any representatives employed and in attendance pursuant to subdivision (a)(1) or (a)(3) shall not be subject to the limit specified in this subdivision.

Comment [MSOffice33]: ES&S Voting System Comments: 'Shall' is mandatory, not optional. Therefore, with the word 'shall' in section (a) directing the ROV to use a space large enough for all observers, it is a mandate required to be paid by someone (requestor, SOS?). (a) should be changed so that ROV may use existing space or at option and payment of requestor a larger space.

Comment [MSOffice34]: Premier Voting System Counties: The number of persons permitted to observe is estimated to be—at a minimum—20 persons, assuming two interested parties (4), seven qualified political parties (14), and one media organization (2). This number could be significantly higher, depending on the level of interest, the number of interested parties, and the number of "bona fide" citizen and media organizations. It is possible that rental space, along with attendant transportation costs, would be required to accommodate 20 or more observers. Either allow the elections official full discretion in setting the number of observers, or specifically state under section 20815 (c) that the recount requestor must pay for any space rental and ballot/supply transportation costs.

Comment [JA35]: DFM Voting System Counties: It makes no sense to have representatives of political parties at a recount of a non-partisan office or measure.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 5100, 15004, 15625, 15628 and 15629, Elections Code.

§ 20817. Security.

(a) The elections official shall, within six (6) months of the effective date of these regulations, establish written ~~utilize existing~~ security measures plan on file with the Secretary of States for recounts to ensure the integrity of the recount proceedings. The security measures shall include, but not be limited to, chain of custody controls and signature-verified documentation for all voter verified paper audit trail records, voted, spoiled and unused ballots, and all "relevant material" as described in section 20813(b).

Comment [MSOffice36]: Premier Voting System Counties: Under (a), the elections official is required to establish written security measures for recounts. Elections officials have security procedures and it would be more cost-effective to use existing procedures for all purposes, including recounts. In addition, this section suggests that ballots and equipment in locked, fenced areas under video surveillance must also be sealed with serialized seals. This would be costly and unnecessary under these circumstances. Costs would be passed to the requestor making it prohibitive; if instead it is borne by the county, it will be burdensome and result in mandate claims against the state.

Comment [MSOffice37]: ES&S Voting System Counties: Agree with Premier.

Comment [JA38]: DFM Voting System Counties: Should refer to security plan each county is required to file with Secretary of State prior to each Statewide Election.

Comment [JA39]: Sequoia Voting System Counties: What does signature verified documentation mean? Is it referring to logging relevant materials?

(b) The security measures must also require a minimum of two members of a special recount board to One or more representatives of the elections official must perform or directly observe critical security processes, such as sealing and locking equipment between recount sessions, verifying the integrity and authenticity of security locks and seals, and setting up voting equipment a requestor requests to examine as relevant material. Where application of tamper-evident seals directly to a system component is required to detect unauthorized access to the component between recount sessions, those seals must be serialized. Equipment and/or relevant material stored in secure areas need not be sealed with serialized seals.

(c) Upon request, all persons authorized to observe the recount pursuant to section 20816 must be permitted to observe and inspect, without physical contact, the integrity of all externally visible security seals used to secure all ballot materials, voter verified paper audit trail records, relevant material as described in section 20813(b), and recount documentation in a reasonable time and manner that does not interfere with the conduct of the recount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Section 15624 and 15625, Elections Code.

Comment [MSOffice40]: Premier Voting System Counties: Under (b), members of the recount board are required to perform or observe security processes. These are functions of the supervisor(s), and shifting them to recount board members is unnecessary and undermines their role as a recount board. In addition, supervisors are permanent staff who are more likely to understand and execute the procedures than recount board members who are typically poll workers who may be unfamiliar with security practices employed within the office environment.

Comment [MSOffice41]: LA County: Preferred replacement language of "designated election representatives" however it was not clear who would designate the representatives -- language modified for clarification.

Comment [MSOffice42]: ES&S Voting System Counties: Agree with Premier.

Comment [MSOffice43]: ES&S Voting System Counties: Does this include sealing and locking equipment for breaks and lunch?

Comment [MSOffice44]: ES&S Voting System Counties: Agree with Premier.

Comment [JA45]: Sequoia Voting System Counties: Agree that materials locked in a secure area need not be resealed, or sealed between sessions or breaks.

Comment [JA46]: Sequoia Voting System Counties: Necessary to limit unreasonable demands on staff's time.

§ 20818. Staffing.

(a) Prior to the commencement of the recount, the elections official shall determine the number of special recount boards necessary to complete the recount in a timely manner.

The elections official shall appoint four voters of the county to each special recount board.

(b) There shall be one supervisor for every ~~two~~ four special recount boards. The supervisor's function is to enforce the rules and transport ballots and reports. The supervisor shall not resolve challenges.

(c) The elections official or his or her designee shall compile all precinct tallies and, at the discretion of the election official, may keep a running tally. At the end of each day, the elections official shall announce publicly the results of the tally of each precinct recounted that day. The election official shall announce a complete re-calculation of results when and if the recount is completed.

(d) The elections official shall determine whether additional personnel is necessary for tasks such as producing relevant material, sorting or retrieving materials, or checking signatures.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Section 15625, Elections Code.

Comment [JA47]: Sequoia Voting System Counties: This is declarative of current law.

Comment [MSOffice48]: ES&S Voting System Counties: Agree with Premier.

Comment [MSOffice49]: Premier Voting System Counties: Requires one supervisor for every two recount boards. Current configuration is one supervisor for every four recount boards. Doubling the number of supervisors would result in prohibitive costs for recount requestors

Comment [MSOffice50]: Premier Voting System Counties: Requires the elections official to compile precinct tallies and keep a "running tally." Depending on the definition of "running tally," this may or may not be reasonable. If the requirement is to compile the tallies of all precincts recounted to date, the cost would increase, but to completely re-calculate the outcome of the contest each day would be burdensome and unreasonable. The results of each precinct should be announced and observers should make their calculations. A complete re-calculation should be made when and if the recount is completed.

Comment [MSOffice51]: ES&S Voting System Counties: Prefer to make this optional as opposed to deleting running tally.

Comment [MSOffice52]: Hart Voting System Counties: If there is not a full and complete recount, i.e. someone is sampling precincts, then it could give confusing information to the public, i.e. won't understand vote fluctuation, etc.

§ 20819. Scheduling.

The elections official shall set the daily schedule for the recount, including hours of operation, breaks and lunch times, in accordance with the requirements of Elections Code section 15626. ~~A special recount board shall not stop for a break or lunch while recounting a precinct.~~ The schedule shall be posted in a conspicuous place at the office of the elections official and at the location where the recount takes place, if different. Times posted shall be approximate.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625 and 15626, Elections Code.

Comment [MSOffice53]: Premier Voting System Counties: Prohibits lunch and other breaks while a precinct is being recounted. Precincts may have as many as 600-800 ballots, and contests may be as high as a vote for 8, with up to 8 qualified write-in candidates (though unlikely). It is not unreasonable to expect it to take up to 5 hours to count a single precinct. Prohibiting breaks would violate state law, union agreements, biological necessity, and an administrative practice to break the entire group at one time for security reasons.

Comment [JA54]: Sequoia Voting System Counties: Agree with Premier.

Comment [MSOffice55]: ES&S Voting System Counties: Agree with Premier.

Comment [JA56]: DFM Voting System Counties: Sometimes it does make sense to finish a precinct before taking a break, or not start a new precinct, and break early, therefore times posted must be approximate.

§ 20820. Spokespersons and Observers.

(a) ~~Any~~ Those persons as indicated in section 20816 may observe the recount proceedings, subject to space limitations of the recount location selected by the elections official pursuant to section 20816.

(b) Upon request by the elections official, each interested party shall appoint one of his or her representatives to serve as a spokesperson authorized to make decisions with respect to the recount on behalf of the interested party, or the interested party may serve as his or her own spokesperson. When accompanied by an elections official, the spokesperson shall have access to all areas where ballots are tabulated/recounted, in the case of a hand recount. In the event of a machine recount, the spokesperson shall have full visual access to areas where ballots are tabulated by machine, and at the discretion of the election official, may be provided a supervised, one-on-one tour of the counting area. The election official may deny access to any person who impedes the recount or declines to follow established procedures.

(c) Questions other than ballot challenges shall be routed through the spokesperson, who shall then direct the question to the elections official or his or her designee. Official discussions with any interested party concerning resolution of questions shall include each interested party or his or her spokesperson.

(d) The elections official may require any requestor, interested party, representative, or observer of the recount proceedings to log in and receive an identification badge before entering the recount location. If required, identification badges shall be worn at all times and returned to the elections official at the end of the day.

(e) Requestors, interested parties, representatives, and observers shall direct all questions and comment to one or more specified liaisons designated by the elections official and shall may not interfere in any way with the conduct of the recount, touch any voting system components, ballots, tally sheets or other special recount board materials, sit at the official recount worktables, place any material on the official recount worktables, engage in conversation, nor talk to members of the special recount boards and supervisors (other than those who may be designated as the specified liaisons) workers while they are processing ballots or other recount materials or assist in recount procedures.

(f) The elections official may deny entry to the recount location to any person who fails to comply with the requirements of this section.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625, 15629 and 15630, Elections Code.

Comment [MSOffice57]: Premier Voting System Counties: It is unclear why the limitations are imposed in section 20816, only to be undermined in this section.

Comment [MSOffice58]: Premier Voting System Counties: If this includes physical access where ballots are undergoing a machine recount, it would constitute a dangerous security compromise. Most counties allow complete visual access but restrain physical access to ballot counting rooms which contain servers and other sensitive information.

Comment [MSOffice59]: Sequoia Voting System Counties: EC 15204 allows the elections official to restrict access to the "area where electronic data processing equipment is being operated...."

Comment [MSOffice60]: LA County: Should refer to areas where ballots are recounted.

Comment [MSOffice61]: ES&S Voting System Counties: Don't agree with total ban on access; okay with supervised one-on-one access for tour/overview. Need authority to deny access if person impedes recount or does not follow procedures.

Comment [JA62]: Sequoia Voting System Counties: does this mean that all parties of the recount, including observers not representing any candidate/voter/campaign, if representing different or same requestor must include all people or just the person/party asking the question. Means we can't answer until all parties have been notified a question has been asked and a time/place for providing the answer.

Comment [MSOffice63]: Premier Voting System Counties: Prohibits observers from talking to recount workers but is silent with respect to supervisors.

Comment [MSOffice64]: ES&S Voting System Counties: Must have some contact person to whom questions and comments may be directed.

§ 20821. Media, Photography and Recording Devices.

(a) The elections official shall, within six (6) months of the effective date of these regulations, develop a written policy providing reasonable access to the recount location by the media, and the use of cameras or audio or video recording devices in the recount location in a manner that will not interfere with the recount, violate the privacy of a voter, or compromise the security of the recount location.

(b) No media interviews shall be permitted in the recount location while the recount is being conducted.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625 and 15629, Elections Code.

Comment [MSOffice65]: Premier Voting System Counties: Photography of sensitive information such as voter signatures which appear on mail ballot and provisional envelopes should be prohibited. In addition, some counties prohibit the use of cameras in ballot counting areas for fear of possible security breaches such recordings might introduce.

Comment [JA66]: Sequoia Voting System Counties: County policy should clarify that media needs to be officially credentialed, and that the use of cameras, etc... is use by the media, not all interested parties in the recount.

Comment [MSOffice67]: ES&S Voting System Counties: Agree with Premier.

§ 20822. Results of Recount.

(a) ~~At the end of each day, or as determined by the elections official, the elections official shall announce publicly the results of the tally of each precinct recounted that day and the cumulative recount tally.~~

(b) ~~If, after a recount has been completed as specified in Elections Code section 15632, the outcome of the election changes, the elections official shall do all of the following:~~

~~(1) Post the results of the recount in a highly visible public location in the elections official's office.~~

~~(2) In a contest for statewide contest, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, transmit one complete copy of all results of the recount to the Secretary of State.~~

(A) The Secretary of State shall compile the results of the recount and notify the counties within 5 business days of receipt of all of the results of the recount as to whether the recount has changed the outcome of the election.

Comment [MSOffice68]: Premier Voting System Counties: Deleted subsection, already required in section 20818.

Comment [JA69]: Sequoia Voting System Counties: Add "or as determined by the elections official." Publicly announcing/posting daily results is misleading especially if challenged ballots are set aside and 20823(c) that requires challenges to be resolved "before the conclusion of all recount proceedings."

Comment [JA70]: DFM Voting System Counties: Regardless of whether the outcome changes, if the recount is completed, the results should be posted in the elections official's office. Further, in the case of a State or Federal office, the elections official will not know whether the outcome of the election changes until notified by the Secretary of State.

Comment [JA71]: DFM Voting System Counties: Contest would include either an office or a proposition.

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~~(2)(b) In the event the outcome of a contest has changed as a result of a recount, other than a contest for statewide office, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal the elections official shall:~~

~~(A)-(1) Recertify the vote cast for the contest being recounted with the new official count for each precinct, including updating the canvass, the official bulletin, and the statement of vote, as needed.~~

~~(B)-(2) Send a copy of the recertification to the Secretary of State, in the case of a contest for statewide contest, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, or, for all other contests, to the public official or governing body that declares the results of the election subject to the recount, in order that they may adopt the recertification and re-declare the results of the election.~~

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Comment [JA72]: DFM Voting System Counties: Not sure how you update a canvass – it is a procedure, not a document.

Comment [MSOffice73]: LA County: Can produce contest specific recertification for manual recount but do not have the ability to incorporate manual recount changes with official election results and provide specified official bulletin and statement of vote. Contest results would have to be manually transmitted from the automated recount result conducted as a separate stand-alone unofficial run, or the recount needs to be conducted 100% manual. In either case, the recount results cannot be key entered into the central tally system for inclusion into the final official results. The only method would be to manually edit the text file report of the statement of the votes cast that is exported from the system, which would be tedious and error-prone, and therefore infeasible. This additional work would be part of overall recount costs. Contest results that change due to a recount are normally reported manually in the final contest certification.

(3) In a contest for statewide office, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, transmit one complete copy of all results of the recount to the Secretary of State.

(4)(3)-Refund all monies deposited for the recount by any requestor whose recount changed the outcome of the election. In a recount of a contest involving multiple counties, if the overall outcome of the election changes, all monies deposited in all affected counties shall be refunded. No refund shall be made, regardless of a change in the vote totals, if the overall outcome of the election is not changed.

(b)) If the recount fails to change the outcome of the election by demonstrating a new winner, the results will not be recertified and the funds will not be reimbursed.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Section 15624, 15625, 15632 and 15633, Elections Code.

Comment [MSOffice74]: ES&S Voting System Counties: In a contest involving multiple counties, if the results change in one county but not for the entire contest does the county with a change in results refund all monies deposited for the recount by any requestor in whose favor the recount changed the outcome? Also if one county's recount confirmed that their outcome was correct but another county had a recount that caused a change in the outcome of the election do all counties including those whose outcome was confirmed have to refund all monies deposited?

Comment [JA75]: Sequoia Voting System Counties: Need clarification as to what happens if recount does not change outcome of election.

§ 20823. Challenges.

(a) A challenged ballot shall be set aside with a notation indicating the precinct number, the method by which it was originally counted for the official canvass, e.g., direct recording electronic voting system, scanner or hand count, the challenge number assigned to the ballot, the reason for the challenge, and the identity of the person making the challenge.

~~(1) Ballots that were counted in the official canvass, including counted vote by mail or provisional ballots, may be challenged only on grounds of disqualifying identifying marks or some other grounds visible on the face of the ballot so that the ballot can be isolated and removed from the count if the elections official determines that the ballot was not properly cast.~~

Comment [MSOffice76]: Premier Voting System counties: Reverse the order of subsections (1) and (2).

~~A ballot that can be isolated, including rejected unopened vote by mail or provisional ballots, may be challenged and added to the count if the elections official determines that the ballot was properly cast.~~

Comment [MSOffice77]: ES&S Voting System Counties: Agree with Premier.

~~(2) The status of a ballot that can be isolated, including challenged, unopened vote by mail or provisional ballots, may be challenged, and such ballot shall be added to the count if the elections official determines that the reason for challenge was insufficient, and that the ballot was properly cast. Ballots that were counted in the official canvass, including counted vote by mail or provisional ballots, may be challenged only on grounds of disqualifying distinguishing marks or some other grounds visible on the face of the ballot so that the ballot can be isolated and removed from the count if the elections official determines that the ballot was not properly cast.~~

Comment [JA78]: Sequoia Voting System Counties: this subsection should be eliminated. The disposition of challenged vote by mail and provisional ballots is correctly made during the Official Canvass

Comment [MSOffice79]: ES&S Voting System Counties: Agree with Premier.

(b) Resolution of challenged ballots shall take place in a segregated area within the recount location, separate from that being used to perform the recount, as determined by the elections official, to avoid confusion and mixing of ballots.

(c) Challenges shall be resolved according to a schedule set each day after all recount boards complete their work, or more often if necessary, as determined by the elections official, but in any event before the conclusion of all recount proceedings. The determination of the elections official on a challenge shall be final. The elections official shall maintain a record of each challenge and the determination on each challenge.

Comment [JA80]: Hart Voting System Counties: It is not always possible to resolve challenges the same day. Need to modify this language.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15625 and 15631, Elections Code.

Article 2. Recount of Votes Cast On Paper Ballots and Tallied By a Scanning Device.

§ 20830. Recounts Using the Vote Tabulating/Recording Device Used In the Election.

(a) Prior to conducting a recount of ballots using a vote tabulating or recording device, a logic and accuracy test shall be conducted on each vote tabulating or recording device to be used in the recount, using a test deck created to check the logic for the contest subject to the recount applying the same test method used prior to the election subject to the recount pursuant to Elections Code section 15000. The test shall be conducted publicly, subject to a limit on the number of public observers due to space limitations consistent with section 20816. The results of the test, as well as the test deck used, shall be made available to the requestor, spokespersons and/or observers present at the time the recount is scheduled to commence as posted, for their inspection before any ballots are counted. ~~the commencement of the recount.~~

Comment [JA81]: DFM Voting System Counties: Card readers (do not tabulate), or server(s)?

Comment [JA82]: Hart Voting System Counties: BallotNow is a Vote Recording Device.

Comment [MSOffice83]: Premier Voting System Counties: Requires elections officials to run complete logic and accuracy test, *applying same test method used prior to election subject to recount.* Requires elections official to run tens of thousands of ballots over several weeks, employing two to 10 or more people. Cost would render machine recount option prohibitive.

Comment [JA84]: Sequoia Voting System Counties: Agree with Premier. Concern that a recount request for a large jurisdiction would tie up voting/ tabulating equipment making it impossible to conduct other elections simultaneously. Monterey has had 10 elections in two years.

Comment [MSOffice85]: ES&S Voting System Counties: Agree with Premier.

Comment [JA86]: DFM Voting System Counties: Do not delay recount because all were not present at that time.

(b) ~~A~~ Recount tabulation of voted ballots ~~on using~~ a vote tabulating or recording device shall, to the maximum extent possible, be conducted using the same methods used to tabulate the voted ballots originally, and shall include the following:

(1) ~~Vote tabulating devices used for the recount shall be set to election mode and not test mode.~~

(2) ~~On~~ equipment that produces a paper tape or print-out, a ~~A~~ zero-results tape or report shall be printed from each vote tabulating or recording device and verified by the requestor and spokespersons prior to any recount tabulation on that device.

(3) ~~If necessary t~~o preserve the original vote count record, a backup of the election results shall ~~may~~ be made, and the same ~~type of~~ memory media that was used in the election shall be prepared to capture the recount vote results.

Comment [MSOffice87]: ES&S Voting System Counties: Agree with deleting requirement that equipment be set to election mode instead of test mode. Would require separate copy of Unity to tabulate, not just separate equipment

Comment [MSOffice88]: Premier Voting System Counties: Deleted subsection requires vote tabulating devices used in recount to be set to election mode rather than test mode. This will necessitate backup equipment, possibly at additional expense, because resetting equipment in some cases will clear original results, which is not acceptable. Delete requirement or provide state funding for additional equipment

Comment [JA89]: Sequoia Voting System Counties: Agree with this change, 400C's do not have tape.

Comment [MSOffice90]: Premier Voting System Counties: Requires zero results tape be printed prior to recounting on machines. Not possible if recounted on equipment connected directly to server and running "mixed mode." In this case, results are not counted to memory card, and no tape is printed.

Comment [MSOffice91]: ES&S Voting System Counties: Agree with Premier, would need new election coding.

Comment [JA92]: Sequoia Voting System Counties: Agree with Hart (below).

Comment [JA93]: Hart Voting System Counties: Need to indicate same type of memory media, not same media. If not, overwrite the same MBB?

(43) Each voted ballot shall be fed through and scanned by the designated a -vote tabulating or recording device or card reader.

(54) Ballots that cannot be read by the designated vote tabulating or recording device or card reader shall be corrected or duplicated in accordance with Elections Code sections 15208, 15210 and 15211.

(65) All eligible vote by mail ballots cast in from a precinct jurisdiction subject to recount, including eligible early-voted ballots cast for that precinct, shall be tabulated for the recount on the same type of vote tabulating or recording device or card reader that was used for the original tabulation. All ballots cast in a polling place on Election Day in a precinct jurisdiction subject to recount shall be tabulated fed through on the same type of vote tabulating or recording device or card reader, but not necessarily the same individual device or card reader, that was used to count the ballots originally, for voting at the polling place.

Comment [JA94]: DFM Voting System Counties: Ballots are not fed through or scanned by the vote tabulating device, they are read by card readers, and the votes are interpreted and tabulated by the server(s).

Comment [JA95]: Sequoia Voting System Counties: Since the ballots that could not be read during the Canvass have already been corrected or duplicated, this is assumed to be taking into consideration ballot fatigue. This would potentially mean duplicating many ballots. What is the procedure if counties run short of duplicate ballot stock.

Comment [MSOffice96]: Premier Voting System Counties: Requires polls ballots to be recounted on same type of equipment used for the election, but *not the same individual device*. Requires election officials to track which device was used for which ballots to avoid its use. For counties using individual scanners in a central counting location where each device is used for multiple precincts, burden would be severe.

Comment [MSOffice97]: ES&S Voting System Counties: Agree with Premier that this will be problematic and expensive to implement.

Comment [JA98]: DFM Voting System Counties: Vote by mail ballots are not cast in a precinct, but rather from a jurisdiction.

Comment [MSOffice99]: LA County: This is being interpreted to require a machine recount - may need to clarify language. LA County's tally system was not designed to support machine recounts of individual contests, so adoption of this regulation as written will force the County into a non-compliance situation.

(c) Once all eligible ballots cast in a polling place for a precinct have been scanned and tabulated by the designated device, the device shall be "closed" so as to accept no further ballots for that precinct and the vote results printed from that device and made available for public inspection. If supported by the voting system, the following steps shall also be taken:

(1) Recount vote results of ballots cast in a polling place for each precinct subject to recount shall be uploaded to the voting system's central tabulation and reporting application; and

(2) The elections official shall report separately the recount vote results for each precinct subject to recount. Such reporting will include the number of ballots undervoted and overvoted in the challenged contest.

(d) At the conclusion of tabulation of all precincts designated for the recount, a logic and accuracy test shall be conducted on each tabulation or recording device used in the recount, using a test deck created to check the logic for the contest subject to the recount ~~applying the same test method used prior to the election subject to the recount pursuant to Elections Code section 15000.~~ This test shall be conducted publicly within the view of the any-requestor, spokespersons and/or observers present. The elections official shall make the results of the logic and accuracy test, as well as the test deck used for the test, available for inspection by the requestor, spokespersons and observers at the conclusion of the recount.

Comment [JA100]: Sequoia Voting System Counties: States that "the device shall be "closed." If 400C is closed it can't be used again. Objection to words "device" and "closed." Maybe, when referring to using a 400C, say close the precinct, not device. Terminology "close the precinct" is not accurate for a central count operation.

Comment [JA101]: DFM Voting System Counties: This system does not "close" precincts. The end card for that precinct is run through the card reader.

Comment [MSOffice102]: Premier Voting System Counties: Requires another complete logic and accuracy test after the election. This, too, would involve many workers running tens of thousands of ballots and would be cost prohibitive for recount requestors.

Comment [MSOffice103]: ES&S Voting System Counties: Agree w/Premier, this will also be a Unity election problem.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15633, 19220, 19360, 19370, 19380, 19381, 19382, 19383 and 19384, Elections Code.

§ 20831. Manual Recounts Generally.

(a) One of the four special recount board members shall read the ballot and call out the vote cast for the contest subject to recount on that ballot; one shall observe that the correct call was made, and two members shall each separately and independently record the votes as called out.

(b) Prior to beginning the actual manual recount, the elections official shall instruct all members of the special recount boards, requestor, interested parties, representatives and observers on the procedures to be followed for the recount and shall provide them with documentation on how to interpret and read the votes cast on the ballot; will be read and interpreted, consistent with federal and state law and the State Uniform Vote Count Standards, and shall include a statement that in the event of a challenge, the determination of the elections official shall be final.

(c) Vote by mail and early-voted ballots cast in a precinct subject to recount shall be tabulated separately from ballots cast in a polling place on Election Day.

Comment [MSOffice104]: Premier Voting System Counties: Requires elections officials to supply "documentation on how to interpret and read the votes cast." This offers a misimpression that some outside authority makes the determination as to how to interpret a vote when the voter's intent is unclear.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15101-15110, 15276, 15290 and 15625, Elections Code.

§ 20832. Manual Recounts, "Vote for One" Contests.

The elections official may conduct the recount using a ballot tally, sort and stack, or other generally accepted method of counting, provided that a comparison check is performed after each 10 or 25 ballots are recounted. Manual recount tabulation on a voting system in a "Vote for One" contest is subject to the following requirements:

(a) Prior to counting the ballots, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct may be separated into stacks that do and do not contain the contest. Those that contain the contest should be sorted as follows:

(1) Ballots that were not voted for the contest (under-voted);

(2) Ballots that were over-voted for the contest; and

(3) Ballots that were voted for the contest, sorted by candidate or position.

(b) Starting with the voted ballots, one member of the special recount board shall state the candidate or position for which the vote was cast making sure the requestor, interested parties and their representatives can observe the ballot.

(c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of either 10 or 25, at the discretion of the elections official.

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out the same number of counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.

(e) An authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the spokesperson for closer inspection. At no time may any spokesperson touch or come into physical contact with any of the ballots. Tallying will resume once the spokesperson has completed the inspection.

(f) Tallying shall continue in this manner, until all stacks of voted ballots have been tallied.

(g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes shall each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they shall each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or position in the recounted contest is reached, the recount of that precinct shall be deemed complete and the results reported to the jurisdiction's chief elections official. If the special recount board members announce each different vote totals for any candidate or vote position in the recounted contest, the recount tallies recorded will be examined. If the difference can be explained

Comment [MSOffice105]: Premier Voting System Counties: This section prescribes a "sort and stack" method of recounting ballots, though the language used is unclear. At one point mandatory language, "*is subject to*" is used. In another, the "precinct *may* (permissive) be counted in this manner, and finally it says the "contest *should* (prescriptive) be sorted." The impression is that this is the desired, or required method of counting. The sort and stack method is more time-consuming than the ballot tally method, and arguably no more accurate.

Comment [JA106]: Sequoia Voting System Counties: Agree with Premier.

Comment [MSOffice107]: ES&S Voting System Counties: Agree with Premier.

Comment [JA108]: Sequoia Voting System Counties: If this is left in, there must be a limit on the time the spokesperson may take to inspect any ballot.

by the special recount board, supervisor or the elections official or his or her designee it shall be corrected on the tally sheet. A written report shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct shall start over.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

Comment [JA109]: Sequoia Voting System Counties: Need to clarify that it is the recount board, supervisor, elections official or designee who is explaining the difference in the vote count, not the observers, representatives or spokespersons.

Comment [JA110]: DFM Voting System Counties: What if the discrepancy persists and there is no explanation?

Comment [MSOffice111]: LA County: We do not use the sort and stack method. Appears to be more time-consuming and prone to errors resulting in more frequent recounts for the same contest. In LACO we check each ballot in stack and call votes for position indicated, any over-votes where voter has voted for more than one candidate, and under-votes where voter has not selected any candidate choice for the contest are recorded as they appear on ballot. Damaged or spoiled/void, misfiled ballots are removed from stack for appropriate corrective action during the recount process. Blank ballots without any votes are an exception, and these probably should be removed from stack and be counted/recorded separately upfront since the SOS wants elections officials to break out counts on Manual Tally Audit reports

§ 20833. Manual Recounts, "Vote for Multiple" Contests.

The elections official may conduct the recount using a ballot tally, sort and stack, or other generally accepted method of counting, provided that a comparison check is performed after each 10 or 25 ballots are recounted. Manual recount tabulation on a voting system in a "Vote for Multiple" contest is subject to the following requirements:

(a) Prior to counting the ballots for the contest subject to recount, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct may be separated into stacks that do and do not contain the contest. Those that contain the contest should be sorted as follows:

- (1) Ballots that were not voted for the contest (under-voted);
- (2) Ballots that were over-voted for the contest;
- (3) Ballots indicating a vote for the first candidate listed on the ballot for the contest; and
- (4) Ballots that do not indicate a vote for the first candidate listed on the ballot for the contest.

(b) Starting with the voted ballots, one member of the special recount board shall hold up the first ballot, so the contest subject to recount can be viewed by the requestor, spokespersons and observers, and shall state the candidate or position for which the vote was cast.

(c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of 10 (or 25).

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out 10 (or 25) counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.

(e) An authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the spokesperson for closer inspection. At no time may any spokesperson touch or come into physical contact with any of the ballots. Tallying will resume once the spokesperson has completed the inspection.

(f) Once all the votes for the first candidate have been recorded, the valid voted ballots shall be resorted into two stacks:

- (1) Ballots that were voted for the second candidate in the contest; and
- (2) Ballots that do not indicate a vote for the second candidate in the contest.

The ballots voted for the second candidate shall be calculated in accordance with (b) through (e) above. Tallying shall continue in this manner, until the votes for each candidate in the contest have been recounted and tallied.

(g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes will each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they will each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or position in the recounted contest is reached, the recount of that precinct shall be deemed

Comment [MSOffice112]: Premier Voting System Counties: Same as section 20832. In addition, sort and stack would be even more onerous in a "Vote for Multiple" contest. If there were 10 candidates and 1,000 ballots, this would require 10,000 stacks for a single precinct. If a contest had only 10 precincts, this would require 100,000 stacks. The cost and risk of repetitive motion injury does not outweigh the unproven assumption that this is a more accurate process.

Comment [JA113]: Sequoia Voting System Counties: Agree that Sort and Stack method should be optional.

Comment [JA114]: Hart Voting System Counties: Sort and stack method of ballot counting is very time consuming. This should be an optional method.

Comment [JA115]: Sequoia Voting System Comments: If this is left in, there must be a limit on the time the spokesperson may take to inspect any ballot.

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complete and the results reported to the jurisdiction's chief elections official. If the special recount board members ~~announce~~ reach different vote totals for any candidate or vote position in the recounted contest, the recount tallies recorded and announced will be examined. If the difference can be explained by the special recount board, supervisor or the elections official or his or her designee, it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct will start over.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

Comment [JA116]: Sequoia Voting System Counties: Need to clarify that it is the recount board, supervisor, elections official or designee who is explaining the difference in the vote count, not the observers, representatives or spokespersons.

Comment [JA117]: DFM Voting System Counties: What if the discrepancy persists and there is no explanation?

Comment [MSOffice118]: LA County: We do not use the sort and stack method. Appears to be more time-consuming and prone to errors resulting in more frequent recounts for the same contest. In LACO we check each ballot in stack and call votes for position indicated, any over-votes where voter has voted for more than one candidate, and under-votes where voter has not selected any candidate choice for the contest are recorded as they appear on ballot. Damaged or spoiled/void, misfiled ballots are removed from stack for appropriate corrective action during the recount process. Blank ballots without any votes are an exception, and these probably should be removed from stack and be counted/recorded separately upfront since the SOS wants elections officials to break out counts on Manual Tally Audit reports

Article 3. Recount Of Votes Cast On Direct Recording Electronic Voting Systems.

§ 20840. Recounts on Direct Recording Electronic Voting Systems Using Electronic Vote Results.

(a) ~~Prior to conducting the actual recount of ballots, a logic and accuracy test shall be conducted, using the same method used prior to the election subject to the recount pursuant to Elections Code section 15000, on each direct recording electronic voting system being used in the recount. The test shall be conducted publicly within the view of the requestor, spokespersons and observers, subject to a limit on the number of public observers due to space limitations consistent with section 20816. The results of that test, as well as the test deck used, shall be made available for their inspection by the requestor, spokespersons and observers before the commencement of the recount.~~

(b) Electronic recount tabulation on a direct recording electronic voting system shall be based on a re-import and re-tabulation of the vote results from the electronic media originally used to capture and transfer the vote results from the direct recording electronic voting system devices into the election management system for that voting system.

Once all vote results have been imported into the election management system from each direct recording electronic voting system device used to cast and record votes in the precincts designated for recount, the elections official shall generate a report for each such precinct detailing the aggregated direct recording electronic voting system vote results for the recounted contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Section 19220, 19381, 19382 and 19383, Elections Code.

Comment [MSOffice119]: Sequoia Voting System Counties: Jurisdictions are required to conduct 100% manual recount from VVPAT tape (conditional re-approval of systems), this section is redundant. Smaller, statistical sampling will suffice and not unduly burden counties. Post Election logic and accuracy test (post-LAT) may be conducted on same machine. However, if pre-election logic and accuracy test (pre-LAT) is repeated on same machine (serial number), all prior results stored on that machine will be lost. Results stored on results cartridge will not be lost if the repeated accuracy test is used on the same machine (serial number) and different results cartridge. Process is not possible in the proposed language ("...same method used prior to the election..."). Can we get rid of 20840 and only have 20841? No requirement for post-LAT (or is that a general requirement for all systems used?). Give the tally sheets for review.

Comment [MSOffice120]: Premier Voting System Counties: This section also requires a logic and accuracy test, a re-import and re-tabulation of votes, and will necessitate additional memory cards for some counties.

Comment [MSOffice121]: LA County: LA's use of DRE voting equipment was limited to the (now discontinued) Touchscreen Early Voting program, which represented at most 1% - 2% of ballots cast. Precinct tally summaries of DRE ballots cast were imported into our central tally system. A recount of a contest would theoretically be made from both InkaVote and DRE ballots. The limitations that apply to an automated recount on InkaVote would also apply to the DRE ballots. We cannot recount one contest without recounting all contests on the ballot, and the new automated results for the contest could not be automatically incorporated into the final election tally results. Neither automated nor manual recounts of DRE ballots using the VVPAT can be imported into the central tally results. A costly, tedious, and error-prone manual update of post-election tally reports in text file format would be required.

§ 20841. Automated Recounts on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Records.

(a) The voter requesting the recount of votes cast on a direct recording electronic voting system may request that it be conducted based on an automated scan and tabulation of the voted ballots directly from the voter verified paper audit trail record. An automated scan shall not be used unless the Secretary of State has tested and approved the automated scan method as part of the certification of the voting system.

(b) Prior to conducting the recount of voter verified paper audit trail records from the direct recording electronic voting system, a test deck created to check the logic for the contest subject to the recount a logic and accuracy test shall be conducted, using the same method used prior to the election subject to the recount pursuant to Elections Code section 15000, on each direct recording electronic voting system device to be used in the recount. The test shall be conducted publicly within the view of the requestor, spokespersons and observers. The elections official shall make the results of that test, as well as the test deck used, available for their inspection at the conclusion of the recount.

(c) Once all vote results have been scanned and captured from each direct recording electronic voting system device used to cast and record votes in the precincts designated for recount, the elections official shall generate a report for each such precinct detailing the aggregated direct recording electronic voting system vote results for the recounted contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 19201, 19220, 19250, 19251 and 19253, Elections Code.

Comment [JA122]: Sequoia Voting System Counties: Agree with Premier.

Comment [MSOffice123]: LA County: LA's use of DRE voting equipment was limited to the (now discontinued) Touchscreen Early Voting program, which represented at most 1% - 2% of ballots cast. Precinct tally summaries of DRE ballots cast were imported into our central tally system. A recount of a contest would theoretically be made from both InkaVote and DRE ballots. The limitations that apply to an automated recount on InkaVote would also apply to the DRE ballots. We cannot recount one contest without recounting all contests on the ballot, and the new automated results for the contest could not be automatically incorporated into the final election tally results. Neither automated nor manual recounts of DRE ballots using the VVPAT can be imported into the central tally results. A costly, tedious, and error-prone manual update of post-election tally reports in text file format would be required.

Comment [JA124]: Hart Voting System Counties: Concern here is that this section is requiring new certification just for scanners. VVPATS are not an issue for other counties. Why should the entire system be re-certified just for the scanners? There needs to be a separate way to certify the scanners separate from the rest of the system.

Comment [MSOffice125]: Premier Voting System Counties: This technology has not been approved for use in the State of California.

Comment [JA126]: Premier Voting System Counties: Same concerns as in other places logic and accuracy testing is mentioned

Comment [MSOffice127]: Sequoia Voting System Counties: A test pattern can be available for review, not a test deck when recounting a DRE. Additionally, a re-count of ballots into the DRE would have to be done manually by entering each ballot separately. Our position is that this is redundant and not necessary as a manual re-count has already been completed. If the vote simulation cartridge is provided to the public, a reasonable interpretation of this clause in the proposed regulation, this creates an opening for attackers to gain knowledge of how votes could be injected into an Edge unit given the correct series of circumstances.

§ 20842. Manual Recounts of Ballots Cast on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Records.

The manual recount using voter verified paper audit trail records shall include the following:

- (a) The voter verified paper audit trail record shall be respooled, or cut, if necessary to permit the recount to begin at the start of the record.
- (b) One member of the special recount board shall be designated to review the voter verified paper audit trail record and call out the vote results for the recounted contest from that record. This member shall begin by reviewing and verifying the zero-results tape printed prior to the opening of the polls and before any votes were captured. The zero-results tape shall also be reviewed and verified by the supervisor of the special recount board and by the requestor and spokespersons.
- (c) The board member designated to review and call out the vote results shall then proceed to review the voter verified paper audit trail records in succession, calling out each ballot in turn and stating how the ballot was voted in the challenged contest.
- (d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. After counting either 10 or 25 ballots (at the discretion of the elections official), the recorders shall confirm that their vote counts match exactly, ~~the board member reviewing and calling out the vote results shall draw a distinct line on the continuous voter verified paper audit trail record between the individual voter verified paper audit trail record containing the 10th or 25th counted vote and the individual voter verified paper audit trail record for the next voted ballot, and the tally shall continue forward for the next 10 or 25 counted votes. If both recorders do not reach 10 or 25 additional votes on the same individual voter verified paper audit trail record, then the count for the last interval of voter verified paper audit trail records shall be stricken from their tally sheets and those voter verified paper audit trail records recounted.~~

Comment [JA128]: Hart Voting System Counties: Inspection of VBO records: potentially may be requests for those VVPAT records not identified by election officials as part of the recount. For example, RDT team carries papers with them that we would not identify. Doesn't specify which kind of VVPAT records, needs definition. "Those records as defined by the election official" would be ideal. The language should be contest-specific.

Comment [MSOffice129]: LA County: LA's use of DRE voting equipment was limited to the (now discontinued) Touchscreen Early Voting program, which represented at most 1% - 2% of ballots cast. Precinct tally summaries of DRE ballots cast were imported into our central tally system. A recount of a contest would theoretically be made from both InkaVote and DRE ballots. The limitations that apply to an automated recount on InkaVote would also apply to the DRE ballots. We cannot recount one contest without recounting all contests on the ballot, and the new automated results for the contest could not be automatically incorporated into the final election tally results. Neither automated nor manual recounts of DRE ballots using the VVPAT can be imported into the central tally results. A costly, tedious, and error-prone manual update of post-election tally reports in text file format would be required.

Comment [JA130]: Sequoia Voting System Counties: The regulations do not address how to challenge a VVPAT vote; what to do about a jammed ballot; 2nd printer needing to be used so there is no zero report on one and no results report on the other.

Comment [JA131]: Sequoia Voting System Counties: Some counties prefer to cut their tapes.

Comment [JA132]: Sequoia Voting System Counties: Need procedure if pollworkers failed to print zero tape (e.g. get affidavit from pollworkers that they observed it at zero prior to opening polls).

Comment [JA133]: Sequoia Voting System Counties: Should not be marking on the VVPAT.

(e) The individual voter verified paper audit trail records shall be displayed to permit the requestor, spokespersons and observers to view the contest subject to recount, either directly or indirectly, as the voter verified paper audit trail record is reviewed and called. Voter verified paper audit trail records for ballots that were cancelled or cancelled and re-voted shall be noted but not counted toward the vote results.

Comment [JA134]: Sequoia Voting Systems Counties: It would be difficult to display in a manner that all parties can view. The VVPATS are not large and cannot easily be viewed from a distance. To view indirectly (video cameras?) would make the recount even more costly.

(f) A requestor or an authorized spokesperson may request to inspect any voter verified paper audit trail record. Tallying shall be halted while the voter verified paper audit trail record is presented to the requestor or spokesperson for closer inspection. At no time may any requestor, interested party, representative or observer touch or come into physical contact with any of the voter verified paper audit trail records. Tallying shall resume once the inspection is completed.

(g) Tallying shall continue in this manner, breaks and meal times excepted until the entire continuous voter verified paper audit trail record has been reviewed and tallied.

Comment [JA135]: Sequoia Voting System Comments: There must be a limit on the time the spokesperson may take to inspect any ballot.

(h) After all ballots of a direct recording electronic voting system have been reviewed and tallied from its voter verified paper audit trail records, the special recount board members who have been recording the votes shall independently calculate the total votes for each candidate or vote position on their tally sheets. When both have completed totaling, each shall announce his or her totals for that candidate or vote position. If both announce the identical vote total for each candidate or vote position in the recounted contest, the recount of those voter verified paper audit trail records shall be deemed complete and the recount shall proceed with the continuous voter verified paper audit trail record for the next direct recording electronic voting system with voted ballots for the challenged contest.

Comment [JA136]: Sequoia Voting Systems Counties: Once again, workers must be allowed breaks and meal times.

(i) If the special recount board members announce different vote totals for the candidate or position, the recount tallies recorded and announced for that candidate or position shall be examined. If the difference can be explained by the special recount board, supervisor or the elections official or his or her designee, it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that candidate or position shall start over.

Comment [JA137]: Sequoia Voting System Counties: Need to clarify that it is the recount board, supervisor, elections official or designee who is explaining the difference in the vote count, not the observers, representatives or spokespersons.

(j) Once all the voter verified paper audit trail records containing ballots for that precinct have been reviewed and tallied, the recount of that precinct shall be deemed complete and the results reported to the elections official.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 19250 and 19382, Elections Code.